

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS (EASTERN DIVISION)**

<b>Comcast of Massachusetts III, Inc.</b>	)	<b>Case No.: 03-12578-PBS</b>
	)	
Plaintiff,	)	<b>AFFIDAVIT IN SUPPORT OF</b>
	)	<b>PLAINTIFF'S MOTION TO AMEND</b>
vs.	)	<b>SCHEDULING/PRETRIAL ORDERS</b>
	)	<b>AND FOR COSTS</b>
<b>Kevin Carter</b>	)	
	)	
Defendant	)	

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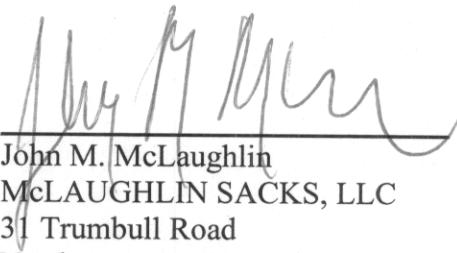
Now comes John M. McLaughlin, Attorney for the Plaintiff in the above-entitled action, and, on oath, states the following:

1. The parties have agreed to mediate this matter. That mediation is now scheduled for May 7, 2004.
2. The mediator had proposed an earlier date which was acceptable to the Plaintiff but which was rejected *by the Defendant*.
3. The Plaintiff has already made its initial disclosures pursuant to FRCP 26(a)
4. The Plaintiff has already given certain "witness statements" to the Defendant;
5. On or about April 13, 2004 the Plaintiff noticed the Deposition of the Defendant for April 21, 2004;
6. Soon thereafter I received a voicemail message from the Defendant to the effect that he did not wish to have deposition on that date;

7. I immediately called Defendant, leaving a voicemail to the effect that the Plaintiff must go forward with the deposition, because of the short timeframe set forth in the scheduling order;
8. Thereafter, after not receiving a return phone call from the Defendant, I called the Defendant again advising Defendant that plaintiff must go forward with the Deposition on April 21, 2004;
9. Not hearing from the Defendant the I prepared to move forward with the deposition on April 21, 2004 with said deposition to be held in the Plaintiff's Maynard, Massachusetts facility located close to the Defendant for his convenience;
10. At approximately 3:22 a.m., April 21, 2004, my office received a voicemail from the Defendant saying he would not go to any deposition before mediation.
11. I was driving from my home in Northampton, Massachusetts and Plaintiff's representative was driving from New Hampshire, when personnel from Plaintiff's counsel's office contacted us by cell phone informing us that Defendant was refusing to appear.
12. Plaintiff will incur various costs because of the late cancellation of the deposition. Should this court grant this motion for costs, I would file an affidavit detailing those costs.
13. The Defendant has still not made any documentary disclosure to the Plaintiff.

14. On Wednesday, April 21, I called the Defendant regarding his failure to appear at the deposition. As of this date he has still not return my phone call

Subscribed and sworn to, under the pains and penalties of perjury, this 26 day of April 2004.



John M. McLaughlin  
McLAUGHLIN SACKS, LLC  
31 Trumbull Road  
Northampton, MA 01060  
Telephone: (413) 586-0865

BBO No. 556328

**CERTIFICATE OF SERVICE**

I, John M. McLaughlin, attorney for the Plaintiff, hereby certify that on the 26<sup>th</sup> day of April 2004, a copy of the foregoing Motion to Amend Scheduling Order, and Affidavit in support of Plaintiff's Motion to Amend Scheduling Order class to:

Kevin Carter  
40 Ontario Drive  
Hudson, MA 01749

John M. McLaughlin, Esq.

